

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

1010 SIXTH ASSOCIATES LLC

Plaintiff,

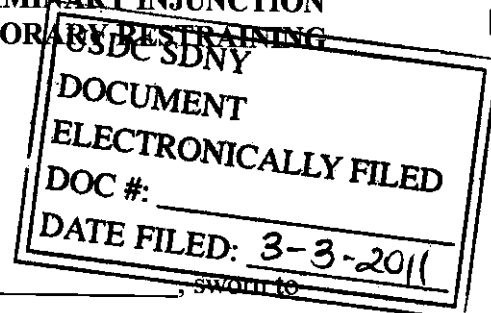
- against -

LUKE THOMPSON, ET AL.

Defendant.

10 Civ. 9488 (LAP )

ORDER TO SHOW CAUSE  
FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING  
ORDER



Upon the affidavits of LUKE THOMPSON

notice of removal  
the 3rd day of March, 2011 and upon the copy of the ~~complaint~~ hereto annexed, it is

ORDERED, that the above named ~~defendant~~ <sup>plaintiff</sup> show cause before a motion term of

this Court, at Room \_\_\_\_\_, United States Courthouse, 500 Pearl Street, in the City, County and  
State of New York, on April 13, 2011, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon  
thereof, or as soon thereafter as counsel may be heard, why an order should not be issued

pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining the defendant during the  
pendency of this action from enforcing orders of the Civil Court of New York  
County, issued after effectuation of removal upon filing the

notice of removal with the civil court on 12/20/2010, but before  
remand on 2/3/2011; and it is further

Specifically a default judgment after  
inquest, for my failure to appear  
in state court on 12/22/10, (after removal).  
ORDERED that, sufficient reason having been shown therefor, pending the  
hearing of ~~plaintiff's~~ <sup>defendant's</sup> application for a preliminary injunction, pursuant to Rule 65, Fed. R. Civ. P.,  
the defendant is temporarily restrained and enjoined from enforcing orders of the

Civil Court of New York County, issued after effectuation of

removal upon filing the notice of removal with the civil court on  
12/20/2010, but before remand on 2/3/2011.

---

\_\_\_\_\_; and it is further

ORDERED that security in the amount of \$ n/a be posted by the  
plaintiff prior to n/a \_\_\_\_\_, \_\_\_\_\_, at n/a \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of that  
day; and it is further

ORDERED that personal service of a copy of this order and annexed affidavit  
upon the defendant or his counsel on or before \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, shall be deemed good and sufficient service thereof.

DATED: New York, New York

ISSUED: \_\_\_\_\_ M

---

United States District Judge

*Orders & Judgments 212/805-0143*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
1010 SIXTH ASSOCIATES LLC,

Plaintiff,

-against-

LUKE THOMPSON, JOHN DOE AND  
JANE DOE,

Defendants.  
-----X

FILED  
11/03/10 PM 7:11

U.S. DISTRICT COURT  
No. 10-cv-9488 (LAP)

**AFFIDAVIT IN**  
**APPLICATION FOR AN**  
**ORDER TO SHOW**  
**CAUSE**

LUKE THOMPSON declares:

1. I am the pro-se Defendant and removing party in this case, and I am over 18.
2. I filed a notice of removal with this court on December 15, 2010 (**Exhibit A**).
3. Then, on December 20, 2010, at 3:06PM, the state court stamped as entered, my letter advising the clerk of the removal and indicating that notice of removal was attached thereto, which it was.
4. A true STAMPED ENTERED copy of this notice is attached as **Exhibit B**).
5. Then, also on December 20, 2010, I filed a notice of compliance with this court indicating that I filed the necessary documents with the state court and transmitted via overnight delivery a copy of the notice to the Plaintiff's attorney. These filings in this court are attached as **Exhibit C**.
6. Then, on December 21, 2010, at 2:00PM, my letter to the Plaintiff notifying them of removal and containing a copy of the pleading was sent to the Plaintiff's attorney and signed for by at their mailroom by a Mr./Ms. "Rodriguez." (copy of letter and delivery receipt attached hereto as **Exhibit D** and **Exhibit E** respectively)
7. In order to properly perfect removal, I refrained from litigating the matter in state court farther, but the state court and plaintiff ignored the notice of removal filed

there (proof of filing attached as **Exhibit B**). Despite this, on 12/23/2010, the state court issued a default judgment anyway against me for failure to appear! The judgment was issued "after inquest" in the amount of \$60,208.46 at 12:08PM on 12/22/2010. A copy of this void ab initio order is attached as **Exhibit F** (showing the extreme ignorance and contempt for any federal law, including bankruptcy law, by the state court, which is why I sought removal in the first place; no matter how outlandish the Plaintiff's request to re-argue bankruptcy law in the state court as a threshold matter to the case, I have no faith in the state court's ability to properly adjudicate that threshold matter).

### **BACKGROUND OF GROUNDS FOR REMOVAL**

8. In November 2010 (within 30 days of removal), in attempting to research how I can get the bankruptcy law that the Plaintiff invoked to receive relief in state court, properly applied to my case (which I believe will only happen in a federal court), I found another case in this court where the Defendant successfully removed a case to this Court after the Plaintiff interposed bankruptcy law in a request for relief from the state court, where this Court subsequently denied Plaintiff's motion for remand and referred the matter to the Bankruptcy Court, what I seek in my removal. I then effected this proper Notice of Removal.

### **URGENCY OF RELIEF**

9. Upon receiving the remand order, apparently the state court again misinterpreted federal law, since on March 2, 2011 (yesterday), the marshal notified me that it received an order from the state court ordering execution of the VOID December 22, 2010 order of that court, **issued without authority since the case had already been removed at that time.**

10. The effect of the order, which is not only against me, but for "John Doe" persons occupying the apartment, which includes evicting these John Doe persons who are models signed with my business B1 Model Management, which is still loosing money, but improving. The imminent eviction severely threatens my business.

11. **I JUST RECEIVED NOTICE OF THIS FROM THE MARSHAL TODAY AT APPRXIMATELY 1PM, AND IMMEDIATELY BEGUN PREPARING THIS APPLICATION IN AN ATTEMPT FOR SAME-DAY**

**RELIEF TO RESTRAIN THE ENFORCEMENT FOR THE VOID 12/23/2010 JUDGMENT.**

12. The court refrained from issuing the warrant until after the case had been remanded apparently, but the Plaintiff proceeded with its effort to enforce the void judgment, as on 1/5/2011, the marshal applied for a warrant to enforce the void order (**Exhibit G**), which apparently was just granted YESTERDAY since the court received the order of remand. This is obviously improper, because the default judgment after inquest and order were void ab initio.

13. I did not anticipate the court allowing enforcement of a judgment that was clearly void.

**REQUEST TO VACATE SUA SPONTE REMAND ORDER**

14. In addition to my request for interim relief, I also seek for cause to be shown why the Court should not vacate its 3/2/11 sua sponte order of remand, which is clearly incorrect on its surface, mistaking who the Plaintiff and Defendant is in the opening paragraph, and again numerous times throughout, and basis its order on this confusion, citing that I (as the Plaintiff) was the one who filed the motion in state court which was based on bankruptcy law, and since a party cannot remove a case based on a federal defense, the case was remanded sua sponte. However, it was actually the Plaintiff (my adversary) who invoked federal law in its pleading, and put the matter of bankruptcy law to the state court as a threshold matter. In response, I properly sought removal.

15. I argue that the case, while no doubt complex, is certainly not so un-meritorious that it warrants a sua sponte remand order under that legal standard. I would concede that the complexities of the matter (I could not find a similar case) may not prove a "clear and obvious" right to removal, but likewise, there's also not a "clear and obvious" right to remand either, in favor of referral to the Bankruptcy Court, as I requested in my notice of removal. Furthermore, the Plaintiff has shown utter contempt for the removal, continuing to litigate the case in state court and failing to move for remand within 30 days, as required.

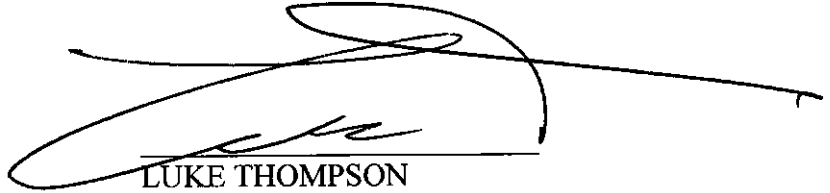
16. To that end, I request that the flawed sua sponte order of remand be vacated in its entirety. A copy of the order of remand is attached hereto as **Exhibit H**.

WHEREFORE, DEFENDANT THOMPSON respectfully requests that the Plaintiff, 1010 Sixth Associates LLC, show cause why an order should not be granted (1) Vacating the 2/3/2011 sue spontne order of remand and (2) Declaring void all orders issued by the Civil Court of New York County, issued between the date removal was effectuated (12/20/2010), and the date of remand (2/3/2011).

AND pending hearing on those matters, for the Court to restrain the Plaintiff and from the sheriff and/or marshal from enforcing orders entered by the state court in the removed case after the notice of removal (earlier filed in this court) was filed in THAT court and delivered to the plaintiff, properly effectuation removal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 3, 2011 at 4:18 in the afternoon.



LUKE THOMPSON

# EXHIBIT A

10 CIV. 9488

## NOTICE OF REMOVAL

2. Subsequent to filing that chapter 7 case, Thompson received a certified mailing with a Summons and Complaint in a civil action captioned 1010 Sixth Associate LLC v. Thompson, Et Al., Index No. 98989/2009 (hereinafter the “State Court Action”) which had had been filed in the Civil Court of the State of New York, New York County.



Copies of the Summons and Complaint are attached as Exhibit (1) pursuant to Civ. R.

81.1.

3. The first pleading or motion from which it may first be ascertained that the case is one which is or has become removable is the Plaintiff's motion, brought on or about November 17, 2010, where the Plaintiff seeks for the State Court to void proceedings based on 11 USC §362(a), and for the State Court restate the void proceedings to avoid the intent of 11 USC §362(a). Copies of these pleadings are attached as Exhibit (2) pursuant to Civ. R. 81.1.

4. The federal law questions raised by the Plaintiff in its state court motion, to void proceedings based on 11 USC §362(a), and restate the void proceedings to avoid the intent of 11 USC §362(a), is substantial to the case, and provides this court with jurisdiction.

5. As such, this court has jurisdiction over the State Court Action, and the State Court Action is removable to this Court pursuant to 28 USC §1334(b).

6. This Notice of Removal is being filed in a timely manner pursuant to 28 USC §1452, as it has not been more than 1 year since the State Court Action was commenced, and it is within 30 day after receipt of the Plaintiff's motion making the case removable, on or about November 17, 2010.

7. Upon removal, this action shall be referred to the US Bankruptcy Court pursuant to 28 USC §157, since the matters at issue revolve almost entirely on interpretation of 11 USC §362(a). In the event that any claim or cause of action asserted in the State Court Action is determined to be non-core, the defendant consents to the entry of final orders or judgments by a bankruptcy judge.

8. By this Notice of Removal, Thompson does not wave any defenses available

in this action, including lack of service of process, in sufficiency of process, defective predicate, or any other procedural or substantive defects concerning the allegations in the Complaint.

9. Pursuant to 28 U.S.C. §1446(d), written notice of the filing of this Notice of Removal will be served upon the Plaintiff.

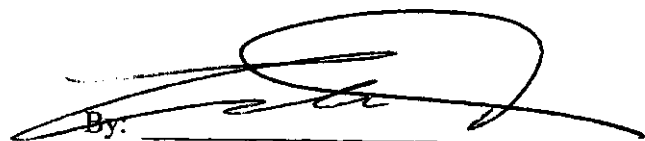
10. Pursuant to 28 U.S.C. §1446(d), written notice of the filing of this Notice of Removal and a true and correct copy thereof will be filed with the Civil Court of the State of New York, New York County.

WHEREFORE, DEFENDANT THOMPSON respectfully notifies this Court that the State Court Action pending in the Civil Court of the State of New York, New York County, bearing Index No. 98989/2009, has been removed to this Court in accordance with the foregoing statutory provisions and requests that the proceeding be referred to the Bankruptcy Court.

Dated: New York, New York  
December 14, 2010

Respectfully submitted,

LUKE THOMPSON

By: 

LUKE THOMPSON  
689 Stony Hill Rd  
Yardley, PA 19067  
(215) 321-4144

# EXHIBIT B

LUKE THOMPSON  
689 STONY HILL RD  
YARDLEY, PA 19067  
(215) 321-4144

Part X  
2/27/11

December 17, 2010

**VIA UPS GROUND**

New York County Civil Court  
Landlord and Tenant Clerk's Office  
111 Centre St, Room 225  
New York, NY 10013

Re: NOTICE OF REMOVAL

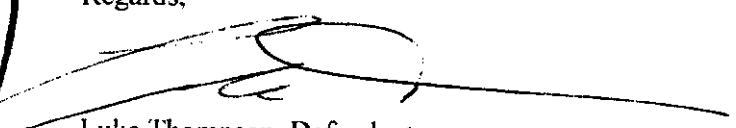
Jack Baer (Chief Clerk) or whom it may concern:

Please be advised that that case in your office captioned 1010 Sixth Associate LLC v. Luke Thompson, Index# LT-98989-2009 has been removed to the United States District Court located at 500 Pearl Street; New York, NY 10007 on December 15, 2010. A judge has not yet been assigned.

In this civil court, this case was assigned Part X to the best of my knowledge.

This letter shall serve as the written notification of removal required pursuant to 28 USC §1446(d), and a copy of the Notice of Removal filed is enclosed.

Regards,

  
Luke Thompson, Defendant

State  
Court's Stamp  
@ 12/20/10 - 3:06 PM

2010 DEC 20 3 06 PM

# EXHIBIT C

LUKE THOMPSON  
689 STONY HILL RD  
YARDLEY, PA 19067  
(215) 321-4144

DEFENDANT PRO SE

RECEIVED

10 DEC 20 PM 5:42

U.S. DISTRICT COURT  
S.D.N.Y.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

1010 SIXTH ASSOCIATES LLC,

Plaintiff,

-against-

LUKE THOMPSON, JOHN DOE AND  
JANE DOE,

Defendants.

-----X

Civil Action No.

10-CV-9488

**NOTICE OF COMPLIANCE**  
**WITH 28 USC §1446**

Defendant, Luke Thompson, respectfully submits a notice of compliance with 28  
USC §1446(d). Exhibits attached hereto contain copies of letters sent to the state court and  
the Plaintiff's attorney:

**EXHIBIT 1** – Letter to Stephen Cohen, Esq., Attorney for the Plaintiff  
**EXHIBIT 2** – Letter to Judge Capella Re: 12/23 hearing in state court Part X  
**EXHIBIT 3** – Letter to Judge Wendt Re: 12/30 hearing in state court Part Y  
**EXHIBIT 4** – Letter to Jack Baer, state court clerk

Dated: New York, New York  
December 20, 2010

Respectfully submitted,

LUKE THOMPSON



LUKE THOMPSON  
689 STONY HILL RD  
YARDLEY, PA 19067  
(215) 321-4144

RECEIVED  
10 DEC 20 PM 5:42

CHAMBERS  
COPY

December 17, 2010

**VIA UPS GROUND**

New York County Civil Court  
For delivery to Judge Capella's Chambers (Room 655)  
c/o Clerk's Office  
111 Centre St, Room 225  
New York, NY 10013

Re: SCHEDULED PROCEEDINGS AFFECTED BY NOTICE OF REMOVAL

Dear Judge Capella (12/23 Part X Judge):


Please be advised that the following hearings in a case assigned to you, 1010 Sixth Associate LLC v. Luke Thompson, Index# LT-98989-2009, are canceled as an effect of having been removed to the United States District Court located at 500 Pearl Street; New York, NY 10007, on December 15, 2010.

Trial	December 23, 2010	Part X – Judge Capella
Motion	December 30, 2010	Part Y – Judge Wendt

This letter shall serve as the written notification of removal required to judges scheduled to conduct proceedings in the case after the Notice of Removal.

The Notice of Removal is being contemporaneously filed with the clerk along with a similar letter notifying the clerk of this case's removal pursuant to 28 USC §1446(d).

Regards,

  
Luke Thompson, Defendant

LUKE THOMPSON  
689 STONY HILL RD  
YARDLEY, PA 19067  
(215) 321-4144

RECEIVED

10 DEC 20 PM 5:42

U.S. DISTRICT COURT  
**CHAMBERS  
COPY**

December 17, 2010

**VIA UPS GROUND**

New York County Civil Court  
For delivery to Judge Wendt's Chambers (Room 664)  
c/o Clerk's Office  
111 Centre St, Room 225  
New York, NY 10013

**Re: SCHEDULED PROCEEDINGS AFFECTED BY NOTICE OF REMOVAL**

Dear Judge Wendt (12/30 Part Y Judge):

Please be advised that the following hearings in a case assigned to you, 1010 Sixth Associate LLC v. Luke Thompson, Index# LT-98989-2009, are canceled as an effect of having been removed to the United States District Court located at 500 Pearl Street; New York, NY 10007, on December 15, 2010.

Trial	December 23, 2010	Part X – Judge Capella
Motion	December 30, 2010	Part Y – Judge Wendt

This letter shall serve as the written notification of removal required to judges scheduled to conduct proceedings in the case after the Notice of Removal.

The Notice of Removal is being contemporaneously filed with the clerk along with a similar letter notifying the clerk of this case's removal pursuant to 28 USC §1446(d).

Regards,



Luke Thompson, Defendant



LUKE THOMPSON  
689 STONY HILL RD  
YARDLEY, PA 19067  
(215) 321-4144

RECEIVED

10 DEC 20 PM 5:42

U.S. DISTRICT COURT  
S.D.N.Y.

December 17, 2010

**VIA UPS GROUND**

New York County Civil Court  
Landlord and Tenant Clerk's Office  
111 Centre St, Room 225  
New York, NY 10013

**Re: NOTICE OF REMOVAL**

Jack Baer (Chief Clerk) or whom it may concern:

Please be advised that that case in your office captioned 1010 Sixth Associate LLC v. Luke Thompson, Index# LT-98989-2009 has been removed to the United States District Court located at 500 Pearl Street; New York, NY 10007 on December 15, 2010. A judge has not yet been assigned.

In this civil court, this case was assigned Part X to the best of my knowledge.

This letter shall serve as the written notification of removal required pursuant to 28 USC §1446(d), and a copy of the Notice of Removal filed is enclosed.

Regards,

A handwritten signature in black ink, appearing to read 'Luke Thompson', with a long horizontal flourish extending to the right.

Luke Thompson, Defendant

# EXHIBIT D

LUKE THOMPSON  
689 STONY HILL RD  
YARDLEY, PA 19067  
(215) 321-4144

RECEIVED  
10 DEC 20 PM 5:42  
U.S. DISTRICT COURT  
S.D.N.Y.

December 17, 2010

**VIA UPS GROUND**  
Borah, Goldstein  
377 Broadway  
New York, NY 10013


Re: NOTICE OF REMOVAL

Mr. Stephen Cohen:

Please be advised that your case captioned 1010 Sixth Associate LLC v. Luke Thompson, Index# LT-98989-2009 has been removed to the United States District Court located at 500 Pearl Street; New York, NY 10007 on December 15, 2010. A judge has not yet been assigned.

This letter shall serve as the written notification of removal required pursuant to 28 USC §1446(d). A courtesy copy of the notice of removal, and of my required letters to the clerk (Jack Baer) and the judges assigned to the case (Capella and Wendt) are also enclosed.

Regards,



Luke Thompson, Defendant

# EXHIBIT E



United States

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My UPS Shipping Tracking Freight Locations Support Business Solutions Preferred Strategic

Tracking Number



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[Other Tracking Options](#)

### Tracking Detail

Print Help A A A

**1ZA9877E0397756178**

[Add Description](#)

Updated: 03/03/2011 4:15 P.M. Eastern Time

#### Delivered

**Delivered On:**  
Tuesday, 12/21/2010 at 2:00 P.M.

**Signed By:**  
RODRIGUEZ

**Left At:**  
Mail Room

  
[Proof of Delivery](#)

[Add Notification »](#)

[Report a Claim »](#)

#### Shipping Information

**To:**  
377 BROADWAY  
4  
NEW YORK, NY, 10013, US

**Shipped By**

**UPS Ground**

The 2011 race season  
is finally here



#### Additional Information

**Reference Number(s):**  
**Shipped/Billed On:**  
**Type:**  
**Weight:**

**COST CENTER: 1745**  
12/19/2010  
Package  
1.00 lb

#### Shipment Progress

Location	Date	Local Time	Activity	What's This?
New York, NY, United States	12/21/2010	2:00 P.M.	Delivered	
United States	12/19/2010	7:20 P.M.	Order Processed: Ready for UPS	

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# EXHIBIT F

12/22/10 void  
State Court order

10/22 Ret. for request to Hon. Capella Pt 4 Judge
DEC 22 2010 After request, pet awarded a FS + Warr possession eviction stayed 10 days + a money idt for rental arrears of \$60,208.46 (11:56-12:08pm) Adj 42 11,911 JOSEPH E. CAPELLA JUDGE, HOUSING COURT 11643 @ 7:30

on  
attorney  
fee  
reasoning.

\$60,208.46 + possession